

MEMORANDUM OF LAW

DATE: March 3, 1995

TO: Susan C. Hamilton, Assistant Director, Metropolitan
Wastewater Department

FROM: City Attorney

SUBJECT: City Signoff on Design Engineering Drawings

This office is in receipt of your February 21, 1995 memorandum recommending the discontinuance of the signature block on design drawings. You question both the time investment as well as liability issues.

While we empathize with the time commitment, the practice of public approval is not a matter of assuming liability but rather one of deflecting it. By virtue of Section 830.6 of the California Government Code, the City and its public employees have statutory immunity when the plan or design of public property "has been approved in advance . . . by an employee exercising discretionary authority to give such approval"

Such design immunity is an affirmative defense to any alleged defect in public property even in the face of evidence relating to the defective design. *Bane v. State of California*, 208 Cal. App. 3d 860 (1989). This critical, and often determinative, immunity is established by showing three (3) elements:

1. Causal relationship between design and accident;
2. Discretionary approval of the design prior to construction;
and
3. Substantial evidence supporting the reasonableness of the design.

Hence one of the key elements of this immunity is the discretionary approval by a public official, which is one of the principal purposes of the signature block involved here. Such approval being a key element of the design immunity defense, we cannot concur in recommending its elimination on time grounds. *Compton v. City of Santee*, 12 Cal. App. 4th 591, 597 (1993). We, of course, have no objection to any streamlining the department may pursue, such as one approval block per set of drawings.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:823.4(x043.2)
ML-95-17